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50 U.S.C.A. 413. [§501 of Nat. Sec. Act]

(a) To the extent consistent with all applicable authorities and duties, including those conferred by the Constitution upon the executive and legislative branches of the Government, and to the extent consistent with due regard for the protection from unauthorized disclosure of classified information and information relating to intelligence sources and methods, the Director of Central Intelligence and the heads of all departments, agencies, and other entities of the United States involved in intelligence activities shall—

(1) keep the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives (hereinafter in this section referred to as the "intelligence committees") fully and currently informed of all intelligence activities which are the responsibility of, are engaged in by, or are carried out for or on behalf of, any department, agency, or entity of the United States, including any significant anticipated intelligence activity, except that (A) the foregoing provision shall not require approval of the intelligence committees as a condition precedent to the initiation of any such anticipated intelligence activity, and (B) if the President determines it is essential to limit prior notice to meet extraordinary circumstances affecting vital interests of the United States, such notice shall be limited to the chairman and ranking minority members of the intelligence committees, the Speaker and minority leader of the House of Representatives, and the majority and minority leaders of the Senate;

(2) furnish any information or material concerning intelligence activities which is in the possession, custody, or control of any department, agency, or entity of the United States and which is requested by either of the intelligence committees in order to carry out its authorized responsibilities; and

(3) report in a timely fashion to the intelligence committees any illegal intelligence activity or significant intelligence failure and any corrective action that has been taken or is planned to be taken in connection with such illegal activity or failure.

(b) The President shall fully inform the intelligence committees in a timely fashion of intelligence operations in foreign countries, other than activities intended solely for obtaining necessary intelligence, for which prior notice was not given under subsection (a) and shall provide a statement of the reasons for not giving prior notice.

(c) The President and the intelligence committees shall each establish such procedures as may be necessary to carry out the provisions of subsections (a) and (b).

(d) The House of Representatives and the Senate, in consultation with the Director of Central Intelligence, shall each establish, by rule or resolution of such House, procedures to protect from unauthorized disclosure all classified information and all information relating to intelligence sources and methods furnished to the intelligence committees or to Members of the Congress under this section. In accordance with such procedures, each of the intelligence committees shall promptly call to the attention of its respective House, or to any appropriate committee or committees of its respective House, any matter relating to intelligence activities requiring the attention of such House or such committee or committees.

(e) Nothing in this Act shall be construed as authority to withhold information from the intelligence committees on the grounds that providing the information to the intelligence committees would constitute the unauthorized disclosure of classified information or information relating to intelligence sources and methods.

amendments to
FOREIGN ASSISTANCE ACT OF 1961
(Hughes-Ryan Amendment)

[88 Stat. 1975, P.L. 93-559, December 30, 1974, 22 U.S.C.A. 2422;
94 Stat. 1981, P.L. 96-450, October 14, 1980]

Section 2422.¹ Intelligence activities—Limitations; Presidential Report to Congress

No funds appropriated under the authority of this chapter or any other Act may be expended by or on behalf of the Central Intelligence Agency for operations in foreign countries, other than activities intended solely for obtaining necessary intelligence, unless and until the President finds that each such operation is important to the national security of the United States. Each such operation shall be considered a significant anticipated intelligence activity for the purpose of section 501 of the National Security Act of 1947.

¹ Section 2422 of Title 22 is the codification of section 662 of the Foreign Assistance Act of 1961, as amended by P.L. 93-559 and P.L. 96-450.

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Calendar No. 780

96TH CONGRESS
2d Session

SENATE

REPORT
No. 96-780

INTELLIGENCE OVERSIGHT ACT OF 1980

MAY 15 (legislative day, JANUARY 8), 1980—Ordered to be printed

Mr. BAYH, from the Select Committee on Intelligence,
submitted the following

REPORT

[To accompany S. 2284]

The Select Committee on Intelligence, to which was referred the bill (S. 2284) to authorize the intelligence system of the United States by the establishment of a statutory basis for the national intelligence activities of the United States, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

AMENDMENTS

Strike all after the enacting clause and insert in lieu thereof the following:

That this Act may be cited as the "Intelligence Oversight Act of 1980".

Sec. 2. Section 662 of the Foreign Assistance Act of 1961 (22 U.S.C. 2422) is amended by striking out in subsection (a) "and reports, in a timely fashion" and all that follows down through the period in subsection (b) and inserting in lieu thereof a period and the following: "Each such operation shall be considered a significant anticipated intelligence activity for the purposes of section 501 of the National Security Act of 1947."

Sec. 3. (a) The National Security Act of 1947 (50 U.S.C. 401 et seq.) is amended by adding at the end thereof the following new title:

"TITLE V—ACCOUNTABILITY FOR INTELLIGENCE ACTIVITIES

"CONGRESSIONAL OVERSIGHT

"Sec. 501. (a) To the extent consistent with all applicable authorities and duties, including those conferred by the Constitution upon the executive and legislative branches of the Government, and to the extent consistent with due regard for the protection from unauthorized disclosure of classified information and information relating to intelligence sources and methods, the Director of

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Section 501(a)(1)—Informing the Intelligence Committees

"SEC. 501. (a) . . . the Director of Central Intelligence and the heads of all departments, agencies, and other entities of the United States involved in intelligence activities shall—

(1) keep the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives (hereinafter in this section referred to as the 'Select Committees') fully and currently informed of all intelligence activities which are the responsibility of, are engaged in by, or are carried out for or on behalf of, any department, agency, or entity of the United States, including any significant anticipated intelligence activity, except that (A) the foregoing provision shall not require approval of the Select Committees as a condition precedent to the initiation of any such anticipated intelligence activity, and (B) if the President determines it is essential to limit prior notice to meet extraordinary circumstances affecting vital interests of the United States, such notice shall be limited to the chairmen and ranking minority members of the Select Committees, the Speaker and minority leader of the House of Representatives, and the majority and minority leaders of the Senate;

"FULLY AND CURRENTLY INFORMED"

Under Section 501(a)(1), the intelligence agencies shall have the affirmative duty to keep the two intelligence committees fully and currently informed. The origin of the phrase "fully and currently informed" is the requirement contained in Section 202 of the Atomic Energy Act of 1946. For over thirty years this authority served the information needs of the Joint Committee on Atomic Energy well by assuring it complete and timely notice of actions and policies of the Federal government in the field of atomic energy. The language is also contained in Senate Resolution 400, 94th Congress, and has served the Select Committee well by ensuring that the Committee is informed of intelligence activities in such detail as the committee may require. The responsibility of the Executive here is not limited to providing full and complete information upon request from the committees; it also includes an affirmative duty on the part of the head of each entity to keep the committees fully and currently informed of all major policies, directives, and intelligence activities. The references to "any" department, agency or entity in subsection (a) impose obligations upon officials to report only with respect to activities under their responsibility, subject to the procedures established by the President under subsection (c).

"SIGNIFICANT ANTICIPATED INTELLIGENCE ACTIVITIES"

Section 501(a)(1) specifically states that the committees will be kept "fully and currently informed . . . of significant anticipated intelligence activities." Such activities include CIA covert operations and, among other things, certain collection and counterintelligence activities. As was stated in the legislative history of S. Res. 400, Re-

port of the Committee on Government Operations, U.S. Senate, to Accompany S. Res. 400, 1976, pages 26-27:

An anticipated activity should be considered significant if it has policy implications. This would include, for example, activities which are particularly costly financially, as well as those which are not necessarily costly, but which have . . . [significant] potential for affecting this country's diplomatic, political, or military relations with other countries or groups . . . It excludes day-to-day implementation of previously adopted policies or programs.

The Executive branch and the Committee expect to work together, as we have in the past, to delineate the matters covered by this provision.

The intent is that the Committee will indicate to the Executive branch those categories of intelligence activities for which it expects advance information, and that those categories will be discussed fully with the Executive branch. As required by the separate amendment to Hughes-Ryan, CIA operations in a foreign country, other than activities intended solely for obtaining necessary intelligence, are to be considered "significant intelligence activities" for this purpose. It is intended that such intelligence operations abroad by other agencies would also be subject to the prior notice designation. In addition, certain intelligence collection and counterintelligence activities may be included if, for example, they are governed by high-level Executive branch approval requirements similar to those that apply to CIA covert operations. Such collection activities are not, however, subject to the separate provisions of subsection (b), discussed below, for timely notice and a statement of the reasons for withholding prior notice. Any collection activity that has not been designated by the Committee as "significant" or that is not governed by the type of approval requirements applying to CIA covert operations would, of course, be subject to the requirements to keep the Committee "fully and currently informed." Special procedures for handling highly sensitive information in these areas may also be established by each committee under subsection (c).

Prior notification of intelligence activities that affect foreign policy encourages consultation between the branches and offers the possibility that better decisions might be made. In testimony on February 21, 1980 before the Select Committee, Admiral Turner stated that "the actions of both [intelligence] committees in reviewing these covert action findings [have] influenced the way in which we have carried them out." He said further that the influence had been "absolutely" beneficial. Similarly, former Director Colby said in testimony on March 24 that discussion of significant planned activities "enables the Executive to get a sense of congressional reaction and avoid the rather clamorous repudiation which has occurred in certain cases . . . and I think that is a helpful device."

The Executive Branch has argued that the President's "constitutional authorities and duties," mentioned in the preamble, might permit a withholding of prior notice through the exercise of the President's constitutional authority. The Constitution does not specifically

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address the allocation of powers to the President associated with national security and foreign policy matters beyond such functions as the duties of the Commander-in-Chief and the power of the President to appoint ambassadors. Congress is given the powers to declare war, raise and support armed forces, and make rules and regulations governing their use, and, in the Senate, give advice and consent to treaties and the appointment of ambassadors. Those powers concerning national security and foreign policy are in a "zone of twilight" in which the President and Congress share authority whose distribution is uncertain.¹

Former DCI Colby has given an example of a rare extraordinary emergency situation when the President might be required to act to defend the vital interests of the nation and there might not be time to provide notice until the plan had begun. Mr. Colby stated:

I can conceive of a cable arriving in the wee hours of the night which says that you have an opportunity to do something of vast importance. It makes a great deal of sense but . . . the return cable has to go out in a matter of three hours. It will be a little hard in that situation to be able to go through the procedure [of notifying Congress] . . . but to hold it because you couldn't get to the Committee at that point I think would be a mistake.

The requirement to "fully and currently inform" the oversight committees of "any significant anticipated intelligence activity" is intended to mean that the committees shall be informed at the time of the Presidential finding that authorizes initiation of such activity. Arrangements for notice are to be made forthwith, without delay.

Congress, of course, has the power to attach the condition of prior notice to expenditure of funds for intelligence activities. The preambular clause referring to authorities under the Constitution is an indication that a broad understanding of these matters concerning intelligence activities can be worked out in a practical manner, even if the particular exercise of the constitutional authorities of the two branches cannot be predicted in advance.

Section 501(a)(1)(A)—Approval of Committees Not Required for Anticipated Intelligence Activity

Section 501(a)(1)(A) states simply that prior notice is required but "the foregoing provision shall not require approval of such committees as a condition precedent to the initiation of any such anticipated intelligence activity." This intent can be traced to S. Res. 400 where it is expressed in different terms in Section 11(A). During debate on the measure, Senator Howard Baker requested such a proviso to be added:

"to make absolutely clear that the inclusion of the words 'including any significant anticipated activities' did not constitute a requirement that the Select Committee either give its consent or approval before any covert action or intelligence activity could be implemented by the Executive branch. Rather, the intent of [in-

¹ U.S. v. American Tel. and Tel. Co., 567 F.2d 121, 128 (D.C. Cir. 1977). *Youngstown Sheet and Tube Co. v. Sawyer*, 343 U.S. 579, 637-638 (1952), opinion of Mr. Justice Jackson.

ures to be reported would include major errors in analysis and/or prediction, failures in technical collection systems or other clandestine operations, and failures to protect sensitive sources and methods information from unauthorized disclosure.

Section 501(b)—Timely Notice

"SEC. 501. (b) The President shall fully inform the Select Committees in a timely fashion of intelligence operations in foreign countries, other than activities intended solely for obtaining necessary intelligence, for which prior notice was not given under subsection (a) and shall provide a statement of the reasons for not giving prior notice."

The Senate Select Committee and the Executive branch and the intelligence agencies have come to an understanding that in rare extraordinary circumstances if the President withholds prior notice of covert operations, he is obliged to inform the two oversight committees in a timely fashion of the action and the reasons for withholding of such prior notice. This requirement retains in full force the current statutory obligation under the Hughes-Ryan Amendment for the reporting of covert operations in a timely fashion to the two oversight committees (but not to other committees). The further requirement of a statement of the President's reasons for not giving prior notice is intended to permit a thorough assessment by the oversight committees as to whether the President had valid grounds for withholding prior notice and whether legislative measures are required to prevent or limit such action in the future.

The term "intelligence operations in foreign countries, other than activities intended solely for obtaining necessary intelligence," is drawn directly from the Hughes-Ryan Amendment and applies to covert operations abroad by any department, agency, or other entity of the United States. It does not apply to activities intended solely to collect or otherwise obtain necessary intelligence. Collection activities are intended, however, to be covered by the requirements of subsection (a) for informing the committees of "significant anticipated intelligence activities" in the circumstances described previously, as well as by the requirements of subsection (a) for keeping the committees "fully and currently informed of all intelligence activities," for furnishing "any information or material concerning intelligence activities" requested by the committees to carry out their responsibilities, and for reporting illegal intelligence activities and significant intelligence failures.

The provisions of subsection (b) are expressly not conditioned upon the preambular clauses that apply to subsection (a).

Section 105(c)—Presidential and Committee Procedures

"SEC. 105. (c) The President and the Select Committee shall each establish such procedures as may be necessary to carry out the provisions of subsections (a) and (b)."

The authority for procedures established by the President is based on Executive Order 12036 and is intended to apply to the Executive branch. The President may, for example, prescribe procedures under which certain information is to be furnished by a designated official. Such procedures shall ensure that the oversight committees are fully

and currently informed, and that they receive information in accordance with their own rules. One or both of the committees shall, in the absence of procedures under which they may act on behalf of the committee in certain highly sensitive circumstances, such as when certain highly sensitive information is received by the committee.

The authority for procedures established by the President is based on the current rules of the House and the Senate. One or both of the committees shall, in the absence of procedures under which they may act on behalf of the committee in certain highly sensitive circumstances, such as when certain highly sensitive information is received by the committee.

Section 501(d)—Congressional Security Information

"SEC. 501. (d) The President shall consult with the Select Committees of the House and the Senate to establish by rule or resolution procedures to protect national security secrets from unauthorized disclosure. In accordance with such procedures, the President shall promptly call the Select Committees of the House and the Senate to any appropriate committee matter relating to intelligence activities in such House or such committee."

Under the preambular clause of each agency head to be carried out "to the extent of classified information from unauthorized disclosure," a similar responsibility is placed on the President. (d) requires both the House and the Senate to consult with the Director of Central Intelligence to develop procedures to protect national security secrets from unauthorized disclosure. Establishment of such procedures is intended to ensure consistency in the handling of such information. The President, as well as the procedures, shall be worked out with the Select Committees of the House and the Senate of give-and-take that has been worked out in 1976. These procedures shall be "in fact, while operating under the provisions of the resolution 400 which also use the word 'furnish any information' to the Committee has not obtained information from the President."

Both the House of Representatives and the Senate have already established procedures for the handling of information or material from unauthorized disclosure as called for in section 501(d) to effective physical security measures to protect against unauthorized disclosure.

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Government employees, will receive the education and health benefits provided for in this bill. Additionally, all of the hostages will be excused from Federal taxes for the period of time spent in captivity.

With the enactment of this legislation, we take a small but extremely important step toward providing a measure of compensation for the severe hardships hostages and their families endure. I am extremely pleased to sign this bill into law.

NOTE: As enacted, H.R. 7085 is Public Law 96-449, approved October 14.

Intelligence Authorization Act for Fiscal Year 1981

*Statement on Signing S. 2597 Into Law.
October 14, 1980*

It is with pleasure that I sign into law the Intelligence Authorization Act for Fiscal Year 1981. This legislation authorizes the appropriation of funds for our Intelligence Community. It is essential that I and those who aid me in the formulation of our Nation's foreign policy make our decisions on the basis of accurate information about the capabilities and intentions of other countries and of forces that shape world events. I am pleased that the Congress has followed my recommendation and authorized sufficient funds to ensure that we continue to have the best intelligence service possible.

I am also pleased to note that this legislation contains authority for the payment of a death gratuity to the surviving dependents of intelligence personnel killed overseas as a result of hostile or terrorist activities or in connection with

an intelligence activity having a substantial element of risk. I pray that, in the future, situations will not arise that would necessitate use of this provision. It is important, however, that our intelligence officers overseas, who daily sacrifice the comforts of home to serve their country under sometimes difficult and dangerous circumstances, know that we as a nation stand behind them and will provide for the welfare of their families should tragedy strike.

In addition to providing funds for a strong intelligence service, S. 2597 also contains legislation that modifies the so-called Hughes-Ryan amendment and establishes, for the first time in statute, a comprehensive system for congressional oversight of intelligence activities. This legislation, which will help to ensure that U.S. intelligence activities are carried out effectively and in a manner that respects individual rights and liberties, was an important part of the comprehensive intelligence charter on which this administration and the Congress have worked for over 2 years. Unfortunately, the press of other legislative matters prevented passage of the charter thus far in this session.

The oversight legislation that was passed does not seek to alter the respective authorities and responsibilities of the executive and legislative branches, but rather codifies the current practice and relationship that has developed between this administration and the Senate and House intelligence committees over the past 3 years. This intent is evidenced by the language of the bill itself and the legislative history that stands behind it.

It is noteworthy that in capturing the current practice and relationship, the legislation preserves an important measure of flexibility for the President and the executive branch. It does so not only by

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recognizing the inherent constitutional authorities of both branches, but by recognizing that there are circumstances in which sensitive information may have to be shared only with a very limited number of executive branch officials, even though the congressional oversight committees are authorized recipients of classified information. Circumstances of this nature have been rare in the past; I would expect them to be rare in the future. The legislation creates the expectation that a sense of care and a spirit of accommodation will continue to prevail in such cases.

I wish to thank Senators Birch Bayh, Dee Huddleston, Dan Inouye, Barry Goldwater, and Mac Mathias, and Congressmen Ed Boland, Clem Zablocki, Bill Burlison, and Ken Robinson for their significant roles in the passage of this legislation.

NOTE: As enacted, S. 2597 is Public Law 96-450, approved October 14.

Interview With the President

Excerpts From a Question-and-Answer Session With John Chancellor of NBC News, October 14, 1980

JUDICIAL APPOINTMENTS

MR. CHANCELLOR. Mr. President, Ronald Reagan says if elected he's going to name a woman to the Supreme Court. What's your response to that?

THE PRESIDENT. Well, I'd say he's privileged to make that promise. I understand that when he was Governor of California he made 600 appointments to judges, and only 12 of them were women. And he made three appointments to the Supreme Court of California, and they were all

white males. Also, he promised to appoint, I think, an Italian American as judge, and he's still got 3 weeks to go.

I've had a good record on appointing women, as you know, and minority groups as well. I've appointed more women by far than all the other Presidents in this Nation combined in Federal judgeships, and I'll continue that process. But I think it is a mistake for a President to promise that in the Supreme Court appointment that it would be a particular kind of American. I'll consider all of them, and I'll continue to treat women fairly.

MR. CHANCELLOR. Mr. President, it seems to me you were not surprised when I asked you that question.

1980 PRESIDENTIAL CAMPAIGN

Let me ask you about the public opinion polls and how you feel about the state of the campaign right now. In the NBC poll among decided voters you're about 10 points behind. We do see evidence in that poll that it's going to come closer to that. Can you tell me how you think it's going to go for the rest of the campaign and how it will come out?

THE PRESIDENT. I think I'll win. We have 3 weeks to go from now, almost exactly, and I think the American people, as they approach the time of making this crucial choice will determine whether their own future, the future of their families and those they love will be most beneficially affected by choosing me or Governor Reagan.

So far, the campaign has been distorted to some degree by the inevitable debate about the debates, the conjecture about who is ahead or who's not ahead, and the charges and counter-charges between candidates. I think in the future, though, the difference on the issues will be much more

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approach is. For example, Senator HARRY F. BYRD, Jr.'s statutory balanced budget requirement has had no apparent effect at all—that is most unfortunate.

A NEW AMENDMENT WOULD REDUCE THE ENDING BIAS WHICH ARE INHERENT IN OUR PRESENT POLITICAL PROCESS

The new amendment would make it more difficult for politicians to support spending increases without the genuine support of the people as a whole. Under its terms, if a simple majority of Members of Congress wished to increase spending for one program, they would have to reduce or oppose other programs—placing interest groups in competition with each other for a fixed spending amount rather than with the taxpayer—or they would have to place themselves on record as voting for a tax increase.

Section 1 of the amendment requires that Congress adopt a budget every year, which would set forth the total receipts and expenditures of the Federal Government—including expenditures now treated as "off-budget." Such budget could not be in deficit unless three-fifths of each House of Congress have so approved. The amendment thus establishes a norm, which can be avoided only if a consensus greater than simple majority exists. As already indicated, if the requirement were merely for a simple majority, no more control would exist than at present. We believe that a three-fifths majority would be a sufficient obstacle to deficit budgets without removing totally the flexibility which many persons desire to retain in case of economic difficulties such as serious recession. It should

be noted here that the environment for such a vote would be quite different than that surrounding the vote on the debt limit. A vote on a deficit budget would occur at the planning stage when defeat of the proposal would still permit adjustments to be made so that the Government would still be able to function in the spending year, although not at as high a level than if the deficit budget had been accepted. In contrast a vote on increasing the debt limit is frequently taken in a crisis atmosphere when rejection would shut down the Government.

Section 1 also provides that the Congress shall not pass, and the President shall not sign, any appropriation bill which would cause total expenditures for any year to exceed the expenditures in the budget for such year. In practice this would require the use of estimates. If the expenditures authorized in a specific appropriation bill, when added to sum of estimated expenditures under permanent appropriations and the expenditures in the appropriations bills already passed for the year, would cause the level of expenditures in the budget to be exceeded, then such bill could not be approved by Congress or the President. No waiver would be available. The bill could only be approved if an increase were adopted in the total budget, which would require a three-fifths vote if a deficit would result and a tax increase otherwise.

Since all spending from the Treasury must be authorized by appropriation,

such a restriction on appropriation bills would restrict Federal spending to the level set forth in the budget.

Section 2 of the amendment prohibits increases in the share of national income going to the Government unless a majority of Congress plus the President—or two-thirds of Congress in the face of a Presidential veto—are willing to vote "on the record" for a specific increase in that share. If a majority of the people as a whole truly support an increase, a simple majority of their elected representatives, along with their President, should be able to accomplish such an increase. Unlike the norm of keeping expenditures no higher than receipts, which should require a simple majority to violate, there is no norm with respect to the taxes and other receipts which should go to Government. Furthermore, increases in taxes and other types of Federal receipts are usually politically unpopular. The majority vote requirement by itself would offset the political advantages to increased spending.

Section 3 of the amendment would allow waiver of the balanced budget requirement during wartime since it would be curious to require a supermajority to finance a war when only a majority is necessary to declare it.

The meaning of all terms can be made clear in legislative history. It is our intention to do that. For example, it will be made clear that the budget which is required must include all expenditures, including what are now known as off-budget items, and that the meaning of the term "receipts" does not include the proceeds of Federal borrowing.

VI THE PROCEDURAL REFORM CONTAINED IN THIS JOINT RESOLUTION IS PREFERABLE TO AN EXPLICIT SPENDING LIMITATION

Madam President, I am certain that some of my colleagues will wonder why we did not simply limit Federal spending directly. Let me briefly explain. We do not believe it desirable to limit spending to any particular arbitrary fraction of the GNP or other similar measure, nor do we believe that requiring supermajorities for spending increases is justified.

First, it could be deemed "antidemocratic" to lock any particular economic theory or policy into the Constitution. If a majority of the people truly want increased spending, we are not aware of any principle which would justify our saying to them that they may not have it. We are simply attempting to correct a political process which allows increases to occur even when the people do not want them.

Second, such theories and policies may well be mistaken. Consequently, complex and detailed formulations are especially inappropriate.

Third, much of the concern which the public feels about Government spending exists because it is perceived as leading to increased taxes. The amendment which insures that politicians will be more accountable to the public for tax increases is a direct response to that major concern.

Finally—and this is related to our concern that democratic principles not be

violated—such an explicit spending limit may not be as constitutionally appropriate. Provisions of the Constitution, including all amendments except the 18th amendment, either, first, establish the structure of Government and basic details of the political process used to establish the will of the national majority, or, second, restrict majority rule in order to protect individual rights or the rights of the States.

To prohibit a majority from spending more than some arbitrary amount does not seem to fall within either category.

We have attempted to draft an amendment that primarily accomplishes a procedural reform, that perfects our political process so that we may rely on it to accurately reflect the actual will of the majority.

Thus, the amendment is intended to make politicians accountable for their support of higher spending through its requirement—in the absence of three-fifths support for deficit spending—that politically advantageous spending programs be balanced by politically disadvantageous tax increases, not automatic tax increase but tax increases resulting from recorded votes.

We have not sought to insure any particular level of spending, even though as individuals we have, of course, our own preferences. We have attempted to eliminate the biases toward spending that exist in our political process without replacing them with new biases.

Given public opinion today, we believe that sections 1 and 2 of our amendment would together act as the effective spending limitation which many Senators seek. At the same time a different result is possible in the future if the will of the people reflects different concerns and different priorities. The present proposal as embodied in Senate Joint Resolution 9 is a most logical one and I commend it to you.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Is there further morning business? If not, morning business is closed.

Mr. GOLDWATER addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Arizona.

Mr. GOLDWATER. Madam President, I believe the order of business is the confirmation of William Casey to be Director of Central Intelligence.

CENTRAL INTELLIGENCE

NOMINATION OF WILLIAM J. CASEY, OF NEW YORK, TO BE DIRECTOR OF CENTRAL INTELLIGENCE

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now proceed to the consideration of Executive Calendar No. 14, the nomination of Mr. Casey to be Director of Central Intelligence, which the clerk will state.

The legislative clerk read the nomination of William J. Casey, of New York, to be Director of Central Intelligence.

Mr. GOLDWATER. Madam President, on January 12, 1981, a hearing was held before the Select Committee on Intelligence at which Mr. Casey appeared and testified, and he was passed favorably by committee with one vote abstaining. I am not sure whether that abstaining vote will be cast as yes or nay today. In order to make this proceeding as short as possible, at certain places I will insert material into the Record. I will be assisted by the very fine Senator from New York.

Madam President, I ask unanimous consent that a brief resume of William Casey's life be printed at this point in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows.

WILLIAM JOSEPH CASEY

March 12, 1912: born in New York City.
1934, B.S. Fordham University.
1937, LL.B. St. John's Law School.
1938-1940, Chairman of Board of Editors, Research Institute of America.
1942-1945, U.S. Naval Reserve, LT Chief, Secretariat, and Chief of Intelligence Operations, OSS, European Theater.
1947-1948, Special Counsel, Senate Small Business Committee.
1948-1962, Instructor in tax law at NYU.
1953-1970, Chairman of Board of Editors, Institute for Business Planning.
1950-1971, Law partner, Hall, Casey, Dickler and Howley, NYC, and predecessor firm.
1968, Republican Congressional Candidate from Third District of New York; lost in primary to Steven DeRouman.
1969-1970, Member, President's Task Force on International Development.
July 1969-April 1971, Member, General Advisory Committee, Arms Control & Disarmament Agency (ACDA).
70-1971, President, International Rescue Committee.
April 1971-February 1973, Chairman, SEC.
February 1973-March 1974, Under Secretary of State for Economic Affairs.
March 1974-January 1978, President and Chairman, Export-Import Bank.
March 1974-January 1978, member, Commission on the Organization of the Government for the Conduct of Foreign Policy (Murphy Commission).
March 1978-May 1977, member, President's Foreign Intelligence Advisory Board (FFIAB).
1978-1980, member of board of directors: Gamble-Skogmo, Litco Corporation, the Trib, etc.; member, advisory board to American Stock Exchange; counsel to law firm of Rogers & Wells; member, International Rescue Committee.
March 1980-November 1980, Campaign Mgr., Reagan Presidential campaign.
Affiliations: Veterans of the OSS, Association of Former Intelligence Officers.
Publications: Tax Sheltered Investments; Lawyers Desk Book; Forms of Business Agreements; Accounting Desk Book; Tax Planning on Excess Profits; How to Raise Money to Make Money; How Federal Tax Angles Multiply Real Estate Profits, and others.

Mr. GOLDWATER. Madam President, I ask unanimous consent that the opening statement of Mr. Casey before the committee be printed at this point in the Record.

There being no objection, the statement was ordered to be printed in the Record, as follows:

OPENING STATEMENT OF WILLIAM J. CASEY

Mr. Chairman, I am William J. Casey. I have been nominated by the President-elect

to serve as Director of Central Intelligence. It is an honor for me to be here today to meet with you and the other members of the Committee for the purpose of discussing my qualifications for this post. I believe it to be vital that this nation have a strong and effective intelligence organization with a wide range of capabilities and the flexibility to adapt and focus them on whatever exterior threats or problems confront the President, the National Security Council, the Congress, and the Executive Branch. It may be helpful to outline the experiences which have formed my views on intelligence.

In World War II, as a naval officer, I had intelligence assignments first in Washington as an aide to William J. Donovan, then the director of the Office of Strategic Services, and subsequently in London as an aide to Colonel David K.E. Bruce, the commanding officer of the Office of Strategic Services in the European Theatre of War commanded by General Eisenhower. Our activities there consisted primarily of working with British and French intelligence and supporting French resistance forces to develop support for the allied armies which invaded and liberated France. When it became clear in the Fall of 1944 that there would be hard fighting in Germany, I became engaged in shifting what had been a French-oriented organization, to one that could function effectively in Germany. When we were surprised by the Hitler counter-offensive in what became known as the Battle of the Bulge, I was appointed Chief of Secret Intelligence for OSS in the European Theatre. In this capacity, I was charged with sending observers to rail and other transportation centers in Germany to report on the movement of German forces, targets suitable for air attack and similar military information.

For a few years immediately after World War II, I worked with General Donovan, General Quinn, who is here today, and with colleagues in wartime intelligence in urging that our nation needed a permanent central intelligence and in studying how such an organization should be organized and function. Since that time, I have spent my working life as a practicing lawyer and as an author, editor and entrepreneur, all of these activities involving somewhat the same kind of gathering, evaluation and interpretation of information which good intelligence work requires. I maintained an interest in foreign policy and national defense. As a founding director of the National Strategy Information Center, I supported the establishment of chairs and professorships in national security on 300 campuses throughout the United States.

During 1969, President Nixon appointed me to the General Committee on Arms Control, on which I served during the preparation and negotiations for SALT I. This experience impressed upon me the vital significance of good intelligence in establishing adequate defense, in negotiating arms control arrangements and in verifying that those arrangements are being observed. I was also a consumer of intelligence as Under Secretary of State in 1973 and 1974. As a member of the Commission of the Organization of the Government for the Conduct of Foreign Policy, known as the Murphy Commission after its chairman Robert Murphy, I took a special interest in the organization of the intelligence community, in improving the relevance and quality of analysis and developing a more effective relationship between producers and consumers of intelligence.

In 1976, President Ford appointed me a member of the President's Foreign Intelligence Advisory Board. There my special interests were economic intelligence and the experiment in the competitive analysis of Soviet strategic intentions, the potential capabilities of Soviet air defense and the accuracy of Soviet missiles.

There is no need for me to describe to this Committee the varied and complex

challenges that confront our nation, the complexity of the political, military and economic forces with which we must deal or the importance of good intelligence to the formulation and execution of effective policies. If I am confirmed for the position for which I have been nominated, it will be my purpose to provide for our policymakers, in the Congress as well as the Executive Branch, timely and accurate information, analysis and estimates on which they can rely, in establishing the defensive strength that we need, in seeking arms control, in developing and maintaining satisfactory relations with other nations, and in competing in an increasingly interdependent global economy. Our foreign policies and defense strategies can never be better for long than our intelligence capabilities. In an era of increasing military vulnerability, effective intelligence is of far greater importance than it may have been some years ago when we had clear military superiority. Anticipating potential problems, understanding the reasons behind events and foreseeing all the potential opportunities—both diplomatic and military—will be critical to successful international relations over the next decade. We are in a period where investments in intelligence capabilities will yield major returns.

Generally, there is poor public perception and understanding of the value of the American intelligence community to the security of the free world. The CIA, in particular, suffers institutional self-doubt. Many of its most competent officers have retired or are about to retire. The morale of much of the agency is low. Too often the agency has been publicly discussed as an institution which must be tightly restrained, stringently monitored or totally reorganized. Little has been done in recent years to stress publicly the critical role which the intelligence community must play in the formulation and execution of our nation's foreign policies and defense strategies. Too many have worked to reduce the feeling of self-worth of intelligence officers. Too few have worked to motivate the best minds in this country to see the intelligence profession as one which is desperately needed for our national security.

While members of the community realize that they cannot receive public recognition for particular tasks well done, they rightfully expect the support of the government which they serve. All too often their "failures" are widely publicized, but their "successes" by their very nature are generally hidden.

We need to make it clear that, while we work to improve it, the intelligence community has our full trust and confidence, that the intelligence profession is one of the most honorable professions to which Americans can aspire, and that we have an appreciation for the dedication and professionalism of its members. We should call on young Americans to serve their country in the field of intelligence. We should ask American scholars to serve their country by sharing their scholarship and insights with those in the community who are responsible for preparing the intelligence analyses used to develop foreign policy and defense strategy.

In the months ahead, this nation will continue to confront major international crises. This is not the time for another bureaucratic shake-up of the CIA. Instead, it is a time to make American intelligence work better and become more effective and more competent and make the members of its establishment respected and honored.

In almost every instance in recent years, so-called "intelligence failures" have been the result of shortcomings in intelligence analysis. The necessary relevant information was generally available, but sometimes either good analyses or sound conclusions did not follow. To be truly beneficial to consumers, data collected must be subjected to critical and insightful analysis conducted by

trained, competent professionals who have a rich background in the subjects involved. The issues which we have to deal with require the best analytical capabilities applied unclassified as well as classified sources.

The attractiveness of intelligence analysis as a profession, part-time as well as full-time, should be increased. We must tap the insights of the nation's scholars in the effort to upgrade the quality of intelligence analysis. We must search for new and better ways to get continuing input from the outside world in order to gather information available inside and outside the government and get the best analyses of the full range of views and data available. A revival of the President's Foreign Intelligence Advisory Board can contribute substantially to this, and there are many other possibilities. When I was Chairman of the Securities and Exchange Commission, I created a large number of task forces made up of members of the SEC staff and people experienced in various phases of the investment industry. Assigned to report on regulatory needs for new forms of investment and trading, on minimizing paperwork and regulatory burdens, making investment analyses more widely available, and similar subjects, we observed insight and perspective which was just not available in Washington.

It is not enough to have good information and accurate assessments. The findings and views of the intelligence community must be forcefully and objectively presented to the President and the National Security Council. I assure you that I will present these views without subjective bias and in a manner which reflects strongly held differences within the intelligence community. It will be my purpose to develop estimates which reflect a range of likely developments for which policymakers must prepare in a manner which emphasizes hard reality undistorted by preconceptions or wishful thinking. As we look back at the recent past, need to remember how early intelligence reports on Soviet missiles in Cuba in 1962, on Soviet divisions preparing to enter Czechoslovakia in 1968, on Arab preparations to attack Israel in 1973, were obscured by judgments that it would not be sensible for these weapons and divisions to have other than defensive or training purposes. Alternative possibilities and their implications must be fully set forth in our assessments so that they can be reflected in our preparation and in our policies.

To carry out its assignment the intelligence community needs both public support and the full participation and cooperation of the Congress. I am pleased that after a period of turmoil the Executive and Legislative Branches have now institutionalized their arrangements in the Intelligence Authorization Act of 1981. I pledge care and diligence in protecting the legal rights of American citizens. I pledge also to work closely with Congress on this as well as in monitoring and improving the performance of the intelligence community. Particularly through the Intelligence Committee's study of U.S. intelligence products, procedures and budgets, Congress will provide a valued independent source of review to ensure we are achieving all that is humanly possible and the Congress will be in a position to provide any necessary legislation.

I will cooperate fully in facilitating the oversight through which Congress can ensure that the intelligence community operates within the limits of the law. This will provide the American people with additional assurance that U.S. intelligence will fully respect their civil liberties, and further strengthen public confidence in our intelligence community.

We have a common purpose in having a comprehensive intelligence system of unqualified preeminence, operating efficiently and within the requirements of our laws.

I expect to conclude that there are some steps which should be taken to improve our intelligence performance. If confirmed, I will promptly, in consultation with the leaders of the intelligence community and the Congress, review without preconception the system as it now exists and how it is working.

Many Senators and Congressmen have put forward a number of suggestions to protect the identities of U.S. intelligence officers and provide relief from some aspects of the Freedom of Information Act. I, too, share the concerns that led to these actions, and I hope that Congress will complete the important work initiated in the last session.

I will examine how we are utilizing the resources we have to produce intelligence. Are we attracting enough of the best people, and providing them with the best possible training? And, are we providing adequate incentives so that we can keep the most competent of those we have now? I know you and your counterpart committee in the House, and academic experts outside of the Congress, have been studying these matters. I would plan to review my findings with you as soon as possible to determine how we can build on our strengths and reduce areas of weakness.

I welcome any questions you may have.

I am happy to yield to my friend from New York for any comments at this time.

Mr. MOYNIHAN. I thank the Chair; I thank my distinguished chairman, the Senator from Arizona.

Madam President, with the indulgence of the Chair and the Senate, I have a brief statement which I feel it important to read in the Senate on this occasion.

Madam President, I rise in support of the confirmation of William J. Casey, of New York, as Director of Central Intelligence. I think it is particularly important to inform the Senate of those parts of Mr. Casey's testimony before the Select Committee on Intelligence which concerns his understanding of the relationship between the intelligence community and the Congress.

I should point out that our statutory intelligence oversight provisions, which are contained in the Intelligence Authorization Act enacted by the 96th Congress in 1980, are unique. There is no other democratic nation in the world in which there is such a close, confidential relationship between the intelligence community and the legislature. There is no other democratic nation in the world in which the legislature has such a wide-ranging statutory right to intelligence information.

These oversight provisions require that the congressional intelligence committees be kept fully and currently informed of all intelligence activities, including significant anticipated intelligence activities; that they be furnished any information or material concerning intelligence activities which they request in order to carry out their authorized responsibilities; and that they be informed of any illegal intelligence activities or significant intelligence failures. When the President determines that "extraordinary circumstances affecting vital interests of the United States" require it, he may limit the prior notification of a significant anticipated intelligence activity to eight Members of Congress, the majority and minority leaders of the two Houses and of the two intelligence committees.

These requirements, while creating the presumption of the fullest cooperation, are not, however, absolute. In drafting the legislation, it was recognized that there are conceivable circumstances in which the President, as Commander in Chief, might act alone. In consequence, two preambular clauses of the statute provide that the exchange of information will take place to the extent consistent with all applicable authorities and duties, including those conferred by the Constitution upon the executive and legislative branches of the Government, and to the extent consistent with due regard for the protection from unauthorized disclosure of classified information and information relating to intelligence sources and methods.

Madam President, because Mr. Casey will be, if confirmed, the first Director of Central Intelligence to take office under the new oversight regime, and because of the reservations contained in the oversight law itself, I judge it necessary to return to this subject during the committee's questioning of him. It seemed important to me to insure that when difficult questions arose under the law the Director of Central Intelligence would be inclined to put the narrowest possible interpretation on those clauses which could be used to restrict congressional access to information. After outlining the oversight legislation, I put the matter in the most severe terms, asking Mr. Casey:

(How do you feel about telling this Committee things we need to know (that) you would just as soon not more than two people in the world know?

Mr. Casey's reply, I believe, demonstrated his intention to continue the satisfactory relationship our committee had with the intelligence community during the past administration:

Senator, I intend to comply fully with the spirit and the letter of the intelligence oversight act. I intend to provide this Committee with the information it believes it needs for oversight purposes. I believe the detailed implementation is something we will work out as we go along. I would intend to follow the practices that have been worked out with the President (and with) the incumbent of . . . the office for which I've been nominated. And there are some reservations of constitutional authority that relate to the President's constitutional authority.

I cannot conceive now or any circumstances under which they would result in my not being able to provide this Committee with the information it requires. I would obviously have to be subject to and discuss with the President any particular situations which I cannot now foresee, and I would do that in a way that this Committee would know about.

It should be noted, however, that with respect to activities conducted abroad other than those intended solely for the collection of necessary intelligence, the President has an unconditional obligation to report to the intelligence committees "in a timely fashion." This insures that, regardless of the sensitivity of the operation or of any other circumstance, the Congress will eventually be informed of any covert action undertaken in a foreign country.

Mr. Casey took note of this development in his opening statement:

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I am pleased that, after a period of turmoil, the Executive and Legislative Branches have now institutionalized their arrangements in the Intelligence Authorization Act of fiscal year 1981. And I pledge to conduct the relations of the Intelligence Community with the Congress in a consultative mode.

Madam President, I believe that to have been a forthcoming and satisfactory answer.

Mr. Casey's answer convinces me that he would be a vigorous advocate, in the councils of the executive branch, for a consultative, rather than confrontational, approach toward congressional rights and prerogatives in the field of intelligence.

Madam President, if the Senate confirms the nomination of Mr. Casey, and I am confident it will do that, I believe it can look forward to a continuation of the current favorable relationship between the Congress and the executive branch concerning intelligence matters.

Mr. DANFORTH assumed the chair. Mr. MOYNIHAN. I thank the Chair and I thank my distinguished chairman.

Mr. President, I ask unanimous consent that there be printed in the Record at this point the text of the oversight provisions of the Intelligence Authorization Act for fiscal year 1981 (Public Law 96-450), which is our basic oversight statute.

There being no objection, the material was ordered to be printed in the Record, as follows:

PUBLIC LAW 96-450

CONGRESSIONAL OVERSIGHT OF INTELLIGENCE ACTIVITIES

Sec. 407. (a) Section 662 of the Foreign Assistance Act of 1961 (22 U.S.C. 2422) is amended—

(1) by striking out "(a)" before "No funds";

(2) by striking out "and reports, in a timely fashion" and all that follows in subsection (a) and inserting in lieu thereof a period and the following: "Each such operation shall be considered a significant anticipated intelligence activity for the purpose of section 501 of the National Security Act of 1947"; and

(3) by striking out subsection (b).

(b) (1) The National Security Act of 1947 (50 U.S.C. 401 et seq.) is amended by adding at the end thereof the following new title:

"TITLE V—ACCOUNTABILITY FOR INTELLIGENCE ACTIVITIES

"CONGRESSIONAL OVERSIGHT

"Sec. 501. (a) To the extent consistent with all applicable authorities and duties, including those conferred by the Constitution upon the executive and legislative branches of the Government, and to the extent consistent with due regard for the protection from unauthorized disclosure of classified information and information relating to intelligence sources and methods, the Director of Central Intelligence and the heads of all departments, agencies, and other entities of the United States involved in intelligence activities shall—

"(1) keep the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives (hereinafter in this section referred to as the 'intelligence committees') fully and currently informed of all intelligence activities which are the responsibility of, are engaged in by, or are carried out for or on behalf of, any department, agency, or entity of the United States, including any significant anticipated intel-

ligence activity, except that (A) the foregoing provision shall not require approval of the intelligence committees as a condition precedent to the initiation of any such anticipated intelligence activity, and (B) if the President determines it is essential to limit prior notice to meet extraordinary circumstances affecting vital interests of the United States, such notice shall be limited to the chairman and ranking minority members of the intelligence committees, the Speaker and minority leader of the House of Representatives, and the majority and minority leaders of the Senate;

"(2) furnish any information or material concerning intelligence activities which is in the possession, custody, or control of any department, agency, or entity of the United States and which is requested by either of the intelligence committees in order to carry out its authorized responsibilities; and

"(3) report in a timely fashion to the intelligence committees any illegal intelligence activity or significant intelligence failure and any corrective action that has been taken or is planned to be taken in connection with such illegal activity or failure.

"(b) The President shall fully inform the intelligence committees in a timely fashion of intelligence operations in foreign countries, other than activities intended solely for obtaining necessary intelligence, for which prior notice was not given under subsection (a) and shall provide a statement of the reasons for not giving prior notice.

"(c) The President and the intelligence committees shall each establish such procedures as may be necessary to carry out the provisions of subsections (a) and (b).

"(d) The House of Representatives and the Senate, in consultation with the Director of Central Intelligence, shall each establish, by rule or resolution of such House, procedures to protect from unauthorized disclosure all classified information and all information relating to intelligence sources and methods furnished to the intelligence committees or to Members of the Congress under this section. In accordance with such procedures, each of the intelligence committees shall promptly call to the attention of its respective House, or to any appropriate committee or committees of its respective House, any matter relating to intelligence activities requiring the attention of such House or such committee or committees.

"(e) Nothing in this Act shall be construed as authority to withhold information from the intelligence committees on the grounds that providing the information to the intelligence committees would constitute the unauthorized disclosure of classified information or information relating to intelligence sources and methods."

(2) The table of contents at the beginning of such Act is amended by adding at the end thereof the following:

"TITLE V—ACCOUNTABILITY FOR INTELLIGENCE ACTIVITIES

"Sec. 501. Congressional oversight."

Mr. GOLDWATER. Mr. President, I thank my friend from New York for that fine statement about Mr. Casey. I might just add that Mr. Casey is not a newcomer to intelligence; he was a member of that wonderful organization, the OSS, which was the start of the CIA. The OSS, Mr. President, was the first real effort this country had ever made at establishing intelligence.

I remember a remark made by Secretary of War Stimson just before World War II, when asked about intelligence and the need for espionage and so forth. He said, "Gentlemen do not read other people's mail." That is how we are starting to struggle through World War II,

without any intelligence on the enemy, without any intelligence on ourselves.

Mr. Casey served in the OSS and then retired and has been a very, very successful lawyer, author and publisher, and has been successful in all the ventures in which he has taken part.

Mr. President, so that the record might be complete, I ask unanimous consent to have printed in the Record a statement required to be completed by Presidential nominees relative to their financial holdings, and so forth.

There being no objection, the statement ordered to be printed in the Record, as follows:

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name (including any former names used): William J. Casey.

Address (list current residence and mailing address): Glenwood Road, Roslyn Harbor, N.Y.

Position to which nominated: Director, CIA.

Date of birth: March 12, 1913; place of birth: New York.

Marital status: Married. Full name of spouse (including any former names used by spouse): Sophia Kura.

Names and ages of children: Bernadette Casey, 25 yrs.

Education, institution, dates attended, degrees received, and dates of degrees:

St. Agnes High School, 1928-1928, none.

Baldwin High School, 1928-1930, 1930.

Fordham University, 1930-1934, BBS, 1934.

Catholic University of America, 1935-1936, none.

St. Johns Law School, 1936-1937, LL.B., 1937.

Honors and awards: Bronze Star, WWII; William Donovan Award 1974; Honorary Doctorates: Fordham University, St. John's University, Adelphi University, Molloy College.

Memberships: Organization, office held (if any), dates:

New York Bar Association, Member, 1950 to date.

International Rescue Committee, President, 1970-71.

Citizens Commission on Indochinese Refugees, Co-Chairman, to date.

American Bar Association, Member, 1970 to date.

Nassau County Bar Association, Member, 1956 to date.

Council on Foreign Relations, Member, 1973 to date.

Atlantic Council, Director, 1976 to date.

Employment record:

1937-1950, Chairman, Board of Editors, Research Institute of America; 292 Madison Avenue, New York.

1950-1971, Partner, Hall, Casey, Dickler & Howley, & Predecessor, 370 Park Avenue, New York, Practice of law.

1954-1971, President & Editor, Institute for Business Planning & Predecessor, Englewood, N.J.

1971-1973, Chairman, SEC, Washington, D.C.

1973-1974, Undersecretary of State for Economic Affairs, Washington, D.C.

1974-1976, Chairman, Export Import Bank, Washington, D.C.

1976 to date, Counsel to Rogers & Wells, 200 Park Avenue, New York.

Government experience:

Member, General Advisory Commission on Arms Control.

Member, Presidential Task Force on International Development.

Member, President's Foreign Intelligence Advisory Board.

Chairman, Task Force on Equity and Venture Capital, SBA.